

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

NICHOLAS BERGERON and NICK )  
QUATTROCIOCCHI, on behalf )  
of themselves and on )  
behalf of all others )  
similarly situated, )  
 )  
Plaintiffs, )  
 )  
V. ) Lead Case  
 )  
ROCHESTER INSTITUTE OF ) NO.: 6:20-cv-06283  
TECHNOLOGY, )  
 )  
Defendant. )

ZOOM AND VIDEOTAPED DEPOSITION OF

CHARLES D. COWAN, Ph.D.

JULY 20, 2022

VOLUME 1

ZOOM AND VIDEOTAPED DEPOSITION OF  
CHARLES D. COWAN, PH.D., produced as a witness at the  
instance of the DEFENDANT, and duly sworn, was taken in  
the above-styled and numbered cause on July 20, 2022,  
from 9:07 a.m. to 3:06 p.m., via Zoom before Wendy  
Schreiber, CSR No. 9383, in and for the State of Texas,  
reported by machine shorthand, at the address 205 South  
Gulf Drive, Santa Rosa Beach, Florida, 32459, pursuant  
to the Federal Rules of Civil Procedure and the  
provisions stated on the record or attached hereto.  
Job No. 850422

1 Q. Sorry. So am I correct in understanding that  
2 you've been engaged as an expert in other litigation?

3 A. Yes.

4 Q. Apart from those engagements, have you ever  
5 been involved as a party to another lawsuit?

6 A. No.

7 Q. Aside from any depositions that you might have  
8 given while engaged as an expert witness, have you ever  
9 been deposed before?

10 A. Are you asking me if I've ever been -- I'm  
11 sorry, I'm going to repeat the question just so I  
12 understand it. Are you asking me if I've ever been  
13 deposed before outside of working as an expert witness?

14 Q. That's correct.

15 A. Yes.

16 Q. And when -- how many times have you been  
17 deposed outside of working as an expert witness? I'm  
18 sorry, the answer that you -- didn't -- it didn't come  
19 through.

20 A. Once.

21 Q. And what kind of action was that?

22 A. The state and city of New York were suing the  
23 Census Bureau because of a -- they wanted the census  
24 counts adjusted for missed persons in the city and State  
25 of New York. I was deposed as a fact witness.

1 Q. And when, approximately, was that deposition?

2 A. 1982, approximately.

3 Q. Apart from that action by the State of New York  
4 and apart from your expert engagements, have you ever  
5 given sworn testimony before?

6 A. I don't know whether your question includes  
7 hearings before regulatory boards.

8 Q. It does, yes.

9 A. Okay. I have a couple of situations involving  
10 regulatory challenges.

11 Q. And were those hearings, did they occur while  
12 you were employed by the federal government?

13 A. No.

14 Q. What -- in what capacity did you testify at  
15 those hearings?

16 A. I was testifying as an expert witness in those  
17 cases, too.

18 (Exhibit 1 was marked for identification.)

19 Q. (BY MS. SHEN) Let's mark as Cowan Exhibit 1  
20 the -- your C.V. which is Exhibit 1 also to your report.  
21 Let me know when you have that pulled up in front of  
22 you.

23 A. I do. Thank you.

24 Q. Dr. Cowan, you earned your Ph.D. in 1984,  
25 correct?

1 A. Yes.

2 Q. What was your dissertation topic?

3 A. Errors in capture/recapture models and the  
4 impact on estimation of the pop -- of the size of the  
5 population.

6 Q. I'm sorry, I'm going to ask you to just to  
7 repeat that. Your audio kind of cuts out it seems like  
8 at the end of your sentences.

9 A. Thank you. The impact of errors and  
10 misclassification on capture/recapture models used to  
11 estimate population sizes.

12 Q. During your Ph.D. candidacy at George  
13 Washington University, did you -- did you pay tuition or  
14 fees as part of your Ph.D. program?

15 A. Oh, there were tuition and fees charged. I  
16 paid -- I can't recall any fees. There were tuitions  
17 charged. Most of those were covered by the federal  
18 government.

19 Q. While you were getting your Ph.D., did you work  
20 as well?

21 A. I did.

22 Q. What did you do?

23 A. I was Chief of Survey Design for the Census  
24 Bureau.

25 Q. Was that a full-time position?

1 A. Yes.

2 Q. Was it typical at George Washington University  
3 for a Ph.D. candidate also to work?

4 A. Yes.

5 Q. And while you were a Ph.D. candidate, were  
6 there any semesters when you worked on your dissertation  
7 only and did not take classes?

8 A. No.

9 Q. How long was your Ph.D. program?

10 A. How many -- how much time did it take?

11 Q. Correct.

12 A. Well, I started in 1977 so seven years.

13 Q. And during those seven years were you enrolled  
14 each semester at GW or did you take any time off between  
15 semesters?

16 A. No, I was enrolled full time for the full seven  
17 years.

18 Q. Did you pay tuition and fees for each of those  
19 seven semesters -- or seven years, excuse me?

20 A. I believe the Census Bureau did.

21 Q. Were you charged tuition and fees for each  
22 semester of those seven years?

23 A. Yes.

24 Q. In your C.V. it references your employment at  
25 the Oregon State University between 1974 and 1975.

1 Could you describe what work you did while at Oregon  
2 State?

3 A. Their survey research center.

4 Q. What kind of work did you do at the survey  
5 research center?

6 A. Conducted surveys.

7 Q. Into what type of areas?

8 A. Some were population surveys of human  
9 populations. Some were fish and wildlife-type studies  
10 to capture various types of fish within the Columbia  
11 River.

12 Q. And what role did you have in conducting those  
13 surveys?

14 A. I directed how the surveys were to be  
15 conducted. I collected data and summarized it for  
16 analysis with computer programs and I wrote reports.

17 Q. While working at Oregon State University, did  
18 you ever work on any valuation models?

19 A. Evaluation models?

20 Q. Correct. Yeah, valuation, I'm sorry.

21 A. Sorry, could you clarify? Did you say  
22 evaluation or just valuation?

23 Q. Just valuation.

24 A. So let me point out that we're -- you're asking  
25 me about work that I would have done in the early 1970s

1 which is approximately 50 years ago so I don't remember.

2 Q. What about your work at the University of  
3 Michigan? What kind of work did you do there?

4 A. I was an assistant study director and I just  
5 helped with data processing of survey data collected by  
6 the center.

7 Q. Do you recall what kind of surveys you were  
8 working on at that center?

9 A. Economic.

10 Q. When you say "economic," what do you mean?

11 A. They were surveys that were on economic topics  
12 of people in the general population.

13 Q. Just going back to your Ph.D. program for a  
14 minute, when you received -- you -- you mentioned that  
15 the federal government paid for your tuition fees.  
16 Was -- did they pay the entirety of your tuition and  
17 fees while you were at GW?

18 A. I believe so. I think there was maybe one fee  
19 that was \$75 so that I could get a copy of my diploma.

20 Q. Did you receive any other aid, for example,  
21 from GW directly for your Ph.D. program?

22 A. No.

23 Q. What about some other courses?

24 A. No.

25 Q. And while enrolled at GW, were there any

1 Q. Did you receive all of the information that you  
2 asked the plaintiffs for?

3 A. I received information for Mr. -- and I  
4 apologize for mispronouncing his name -- Quattrociochi.  
5 I did not for Mr. Bergeron.

6 Q. Was there -- were you given an explanation as  
7 to why you did not get information about Mr. Bergeron?

8 A. No. Well, I mean, I asked if they had the  
9 information. They said they hadn't received it and that  
10 was the only explanation I got. I didn't delve further.

11 Q. Did you make -- did you ask plaintiffs whether  
12 they could get the information that you needed about  
13 Mr. Bergeron?

14 A. Well, the way the conversation went I  
15 understood that they were in the process of obtaining  
16 information. I didn't ask whether they could or not.  
17 My impression was simply that they were in the process.

18 Q. Approximately -- and did you ever do any  
19 follow-up with the plaintiffs about whether they got the  
20 information or were able to provide it to you about  
21 Mr. Bergeron?

22 A. Well, this is -- this activity was performed in  
23 about a one-to-two-week-time period so, no. After the  
24 first week we had pretty much completed our report.

25 Q. And approximately when did -- when were the two

1 weeks when you worked on the report?

2 A. 4/13 -- April 13th through probably April 27th.

3 Q. And that's of 2022?

4 A. Yes, ma'am. I'm sorry.

5 Q. Was there any other information that you asked  
6 the plaintiff for which was not provided to you?

7 A. I believe you asked me this earlier and I --  
8 the answer was no.

9 Q. Apart from the information about RIT's  
10 published tuition and fees prices and the information  
11 from I believe it's the Department of Education's  
12 National Center for Education Statistics that you  
13 referenced, was there any other publicly-available  
14 information that you or your team reviewed in preparing  
15 your report? I'm sorry, I didn't catch that answer.

16 A. No.

17 (Exhibit 4 was marked for identification.)

18 Q. (BY MS. SHEN) I'm going to come back to  
19 Exhibit 3, your report, so if you could just keep that  
20 document open but for the moment let's move on and mark  
21 as Cowan Exhibit 4 Exhibit 3 to your report, Dr. Cowan,  
22 which is your sources list. Let me know when you have  
23 that pulled up.

24 A. I have it. Thank you.

25 Q. So this document is titled "Materials Relied

1 On." Were there any other documents that you or your  
2 team reviewed which are not disclosed in this Exhibit 4?

3 A. Not that I'm aware of.

4 Q. Looking under the "Depositions" heading in your  
5 sources list, you reference the deposition of Edward  
6 Lincoln, the deposition of Nicholas Bergeron and the  
7 deposition of Nicholas Quattrociochi. Were you  
8 provided any other deposition transcripts?

9 A. I don't believe so, no.

10 Q. Were you aware that a deposition of an RIT  
11 corporate witness was taken?

12 A. Umm.

13 Q. I'm sorry, that answer was a little garbled.

14 A. That was because I said umm. That was just a  
15 stop. I don't think I knew it before I read the --  
16 before I wrote my report. I believe I became aware of  
17 it afterwards but I've never seen it.

18 Q. After you finished writing your report did you  
19 ask for a copy of that deposition transcript of RIT's  
20 corporate witness?

21 A. No.

22 Q. Why not?

23 A. My analysis is pretty much based on the  
24 published materials from RIT. It doesn't -- I don't  
25 find in any of these cases reading depositions to be

1 very helpful with respect to providing a basic  
2 calculation for class certification.

3 Q. And why is that?

4 A. Sorry, why is it that I don't find it very  
5 helpful?

6 Q. Correct, yes.

7 A. Well, it's a very straightforward calculation.  
8 There is a published charge to students. There is a  
9 published rate for online classes. There is a timing  
10 component with respect to when the university closed  
11 down. Those are -- and typically we don't have  
12 information for fees like we did in here. So there  
13 isn't a whole lot more than that that I need for doing a  
14 basic calculation for the purpose of a class  
15 certification.

16 Q. The three deposition transcripts that you  
17 reviewed, did you review the exhibits that were shown  
18 during those depositions?

19 A. I didn't but one of my staff might have.

20 Q. Looking back at Exhibit 4 under the heading  
21 "Websites Cited," when, approximately, did you or your  
22 team visit the websites that are listed there?

23 A. Somewhere in that two-week time period I  
24 described earlier.

25 Q. So that would be April of 2022?

1 Q. And you did not personally review  
2 Mr. Bergeron -- the deposition exhibits to --  
3 Mr. Bergeron's deposition exhibits to see if there was  
4 any information in there about his financial aid,  
5 correct?

6 A. I did not.

7 Q. Did you have any -- did you ever ask anybody  
8 from your team if they had reviewed Mr. Bergeron's  
9 deposition exhibits to see if there was information  
10 about his financial aid and scholarships?

11 A. No.

12 Q. Let's go back to Cowan Exhibit 3 which is your  
13 report, Dr. Cowan, and if you could turn to page 2 of  
14 your report, paragraph 4. Let me know when you're  
15 there.

16 A. I'm there.

17 Q. The first sentence of paragraph 4 says, "At  
18 this point detailed information has been produced only  
19 with respect to one of the Plaintiff representatives,  
20 Mr. Quattrociochi..." -- and then you say in  
21 parentheses "(the 'Lead Plaintiff')." --

22 What do you mean by "detailed information"?

23 A. Well, the detailed information would be the  
24 printouts that we were just reviewing with respect to  
25 what tuition was paid, what specific fees were paid, how

1 much the fees were, the scholarship information, what  
2 type of scholarship it was. Those were all items that  
3 you just showed me on Mr. Quattro -- Quattrociocchi's  
4 description.

5 Q. And when you say "produced" in this sentence,  
6 what did you mean by that?

7 A. Well, to me. I meant produced to me.

8 Q. All right. The second sentence of that same  
9 paragraph 4 says, "Detailed information similar to that  
10 provided for the Lead Plaintiff has not been produced  
11 for other class members, including any information on  
12 fees."

13 What did you mean by "any information on  
14 fees"?

15 A. Pretty much what it says, any information on  
16 fees. I only have information for Mr. Quattrociocchi.  
17 I don't have it for other people who are in the class  
18 who are not named plaintiffs. I don't have any detailed  
19 information for any of them.

20 Q. And what -- what other information are you --  
21 would you need on the fees in order to complete your  
22 analysis?

23 A. Well, my analysis to date is -- is complete,  
24 however, what the next sentence says is my understanding  
25 is that if the class is certified, information about

1 tuition, fees and so on will be made available so that I  
2 can calculate damages on a class-member-by-class-member  
3 basis. I can't do that right now.

4 Q. I understand what you're saying about  
5 calculating damages on a class member basis but -- and  
6 I'm sorry if I was unclear but my question is  
7 specifically geared towards the fees. What information  
8 do you need with respect to fees in order to conduct the  
9 damages analysis?

10 A. Well, different people have different fees so I  
11 need to know what fees they paid, whether they took a  
12 lab or not and paid a lab fee. I also need to know some  
13 information about fees charged with respect to whether  
14 or not the student had access to a particular type of  
15 activity. So, for example, if RIT has on-campus  
16 healthcare and despite the school being closed down  
17 healthcare was still available to all of the students,  
18 then I wouldn't consider that to be lost to the student,  
19 they had healthcare available the whole time. So if  
20 they paid a fee, they got what they paid for. So I need  
21 some information about what was paid, what it was paid  
22 for and I also need to know whether or not certain  
23 things were available during the time that the  
24 university was closed.

25 Q. So would that be the same with respect to the

1 student activity fees; that, for example, if students  
2 continued to have access to the types of programs or  
3 activities that were intended to be covered by the  
4 student-activity fee that your -- your conclusion would  
5 be that there would be no refund due?

6 A. I can only say that it might be. That  
7 speculation on my part because I don't know right now  
8 what activities were covered with that fee.

9 Q. And how would you -- how did you typically  
10 obtain that information? So it was just -- let's go  
11 back to your -- your student health fee example. You  
12 mentioned that you would need information about whether  
13 students continued to have access to healthcare  
14 services. What kind of information would you need to --  
15 to answer that question?

16 A. I think the only thing I would need to know is  
17 whether or not health clinics were open or  
18 alternative -- or was some alternative provided like  
19 access -- paid access to urgent care, for example.

20 Q. And that information was not provided to you by  
21 the plaintiffs as you prepared your report, correct?

22 A. It was not.

23 Q. Did you or anybody on your team look for that  
24 information in publicly-available sources?

25 A. Not that I'm aware of.

1           Q. Turning back to Exhibit 3 of your report, I'm  
2 looking at paragraph 5, the last sentence. You say, "I  
3 do not offer similar calculations for Graduate Students  
4 or with respect to fees because I do not have the  
5 necessary information to provide such calculations."

6                       Here what is the necessary information that  
7 you would need to provide those calculations?

8           A. My understanding was that there would be  
9 different tuition rates for graduate students in  
10 different graduate programs. I wasn't aware of whether  
11 or not graduate students would be charged the same fees  
12 or other fees so I just don't have enough information to  
13 be able to safely say that I can do a calculation -- an  
14 actual calculation for graduate students as opposed to  
15 just saying this is the framework that I propose to use.

16          Q. Your team was able to pull from  
17 publicly-available sources information about the  
18 undergraduate tuition and fees charged, correct?

19          A. Yes.

20          Q. Did anybody on your team or did you look for  
21 publicly-available information as to the graduate  
22 tuition and fees charged?

23          A. I don't know if they did or not.

24          Q. Did anybody -- did you -- okay, sorry. Take  
25 that back. Did you yourself look for publicly-available

1 correct?

2 A. Yes.

3 Q. And it's possible though that even their  
4 overall value contracted for is higher, their value per  
5 credit hour may actually be lower depending on how the  
6 math works itself out?

7 A. Yes.

8 Q. Sticking with Table 1 of your report, the --  
9 there's a line item here for total RIT subsidies and,  
10 you know, for Mr. Quattrociochi I think we can agree  
11 that it was \$2,000. What does -- what is included under  
12 the umbrella of RIT subsidies?

13 A. You mean, what is included that's offered by  
14 RIT or are you asking me what it is that I use?

15 Q. What it is that you use.

16 A. If the payment goes directly to offset the  
17 tuition, then I use it as an offset to the tuition  
18 because it's an amount that the student doesn't pay out  
19 of pocket. On the other hand, if it's a payment to the  
20 student from some type of grant let's say where the  
21 money just goes directly to the student and they can  
22 spend it on anything, then I don't consider that an  
23 offset because I don't know if they applied it to  
24 tuition or not.

25 Q. Did you have any information as to how I'm

1 going to call it generally student financial aid is  
2 credited into a student's account at RIT?

3 A. I must have had some information since I used  
4 the subsidy to offset the tuition. I'm not sure I have  
5 all of the information that I need for every single type  
6 of grant, scholarship or whatever.

7 Q. Did you ask plaintiffs or their counsel for  
8 that information?

9 A. When I said that I'm not sure I know, I just  
10 mean that I don't remember. It could be that I've got  
11 that information but, you know, I collected that  
12 information months ago and just don't recall now.

13 Q. In -- in your definition of "RIT subsidies"  
14 did -- did you consider the source of the funding? And  
15 what I mean by that is did you make any further  
16 segregation as between institutional aid from RIT versus  
17 government aid versus other third-party aid?

18 A. Well, for this report that wasn't necessary. I  
19 already had the information I needed for  
20 Mr. Quattrociochi and I described how I was going to  
21 deal with this in general so I don't believe I had that  
22 information but, on the other hand, for a report for  
23 class certification it's not necessary.

24 Q. Why do you say that?

25 A. I already laid out my -- my general

1 methodology. What I have is information for one of the  
2 two named plaintiffs and I used that specific to that  
3 named plaintiff. Later when I talk about general  
4 calculations, I talk about subtraction of subsidies but  
5 I don't have all the information regarding the source,  
6 whether the source makes any difference, whether there's  
7 something unique about some sources that specifies that  
8 the money goes to the student versus other sources that  
9 go to the university. All that can be resolved after a  
10 class certification but it's not relevant to this one  
11 calculation or to the general methodology that I laid  
12 out.

13 Q. I -- I just want to make sure I'm understanding  
14 you correctly. So if you were to evaluate this on a  
15 putative class-wide basis, you would need to know the  
16 source of the funding, correct?

17 A. I don't know if I need to know the source of  
18 the funding. It could be just that the information I  
19 receive tells me it's a tuition offset and not a tuition  
20 offset in which case I don't care where the money came  
21 from.

22 Q. Okay. Would you care about whether -- I think  
23 you've answered this already but I just want to make  
24 sure I'm understanding correctly -- you would care about  
25 whether there are directives as to how that funding can

1 be applied, correct?

2 A. Well, I may or may not if I need that  
3 information to be able to tease out whether or not with  
4 tuition but as I said in my previous answer, it might be  
5 that the information I get just tells me indirectly it's  
6 a tuition offset in which case the directives don't  
7 matter.

8 Q. Sure. You know, maybe -- maybe this will be a  
9 little easier if we look at Mr. Quattrocio's student  
10 ledger so why don't we pull back up -- yeah, if you  
11 could pull back up Exhibit 7. This was the document  
12 with Bates stamp RIT0001261.

13 A. I'm there. Thank you.

14 Q. Okay. So looking at -- at Exhibit 7 -- I'm at  
15 page Bates stamp RIT0001264 -- we looked previously at  
16 the scholarship and grants and there's a \$2,000 RIT  
17 grant increase. Are you able to tell from this data  
18 whether -- whether that RIT grant increase is  
19 specifically a tuition offset or not?

20 A. In the accounting that is listed here -- sorry,  
21 I need to go to a different page. Could you remind me  
22 which page we're looking at?

23 Q. Yes, I'm looking at RIT0001264.

24 A. Thank you. So the way that the accounting  
25 works here at least within this ledger is that the

1           A. I don't see how that makes any difference at  
2 all to my calculation. My calculation only applies to  
3 people who took on-campus classes. So now you're asking  
4 me about something regarding the RIT online but they're  
5 not part of the class so I don't -- I don't see how it  
6 matters how those prices are set. They are just the  
7 prices that are charged to students who opt for that  
8 program.

9           Q. But the -- like you said before though, the  
10 price that is set is the result of some sort of value  
11 proposition, correct?

12          A. Well, it might be but I don't care what the --  
13 the negotiation is to get to the value proposition.  
14 It's -- it's the final price that is set.

15          Q. But that price is reflective of certain  
16 attributes of the RIT online program that may be  
17 different from attributes of the RIT sort of in-person  
18 experience, correct?

19                   MR. DOOLITTLE: Object to form.

20                   THE WITNESS: The whole case was about the  
21 fact that there's a difference between in-person  
22 education versus online. I don't know what the  
23 differences are. I just know that there are differences  
24 because there are different prices paid. You're asking  
25 me whether or not there's a differential in price paid,

1 you know, for cars with four cup holders versus six cup  
2 holders.

3 Q. (BY MS. SHEN) And -- well, so following your  
4 hypothetical, the -- the price differential between a  
5 car with four cup holders versus a car with six cup  
6 holders, is in your example two cup holders, correct?

7 A. No, that's not the price differential. That's  
8 just the difference between the two cars. You could  
9 charge the same for both.

10 Q. Okay, sure. I think I -- I think understand  
11 what you're saying but in -- so let's stick with that  
12 example for a second. If the -- if there is a price  
13 difference between a car with four cup holders and a car  
14 with six cup holders, one of the reasons there could be  
15 a price difference is the difference in the number of  
16 cup holders, correct?

17 MR. DOOLITTLE: Object to form.

18 THE WITNESS: That is a possibility.

19 Q. (BY MS. SHEN) Okay. And so it is possible in  
20 our case that one of the reasons for the difference  
21 between the price for RIT online versus the price of  
22 tuition for RIT's clinical in-person students is the  
23 availability of institutional aid, correct?

24 MR. DOOLITTLE: Object to the form.

25 THE WITNESS: But I don't know that just

1     like I don't know that that's the reason that there's a  
2     price differential due to solely the existence of two  
3     cup holders. There could be other differences, too,  
4     that aren't clear to me and so you're asking me about  
5     now a number of hypotheticals but they're incomplete  
6     hypotheticals. I can't answer as to whether or not the  
7     online price is a function of whether or not student aid  
8     is available. I only know what the final online price  
9     is. So, again, you know, you're asking me about  
10    something that has nothing to do with the numbers that I  
11    see. It has to do with some machination at the  
12    university where they made a decision and it's opaque to  
13    everybody and -- but the only thing -- I don't care that  
14    it's opaque but what I do care about is that the only  
15    number I've got is this is what I'm paying for online  
16    classes.

17           Q. (BY MS. SHEN) And -- and so you chose to use  
18    the RIT online rate as the benchmark for your analysis,  
19    correct?

20                   MR. DOOLITTLE: Object to form.

21                   THE WITNESS: I did.

22           Q. (BY MS. SHEN) I'm sorry, your answer was cut  
23    out a little bit.

24           A. I did.

25           Q. And in using the RIT online rate as your

1 benchmark, wouldn't -- isn't it important to consider  
2 what that benchmark covers? And what I mean by that is  
3 isn't it important to consider what you are getting as  
4 when you pay for the RIT online program versus what you  
5 are getting if you pay for the RIT in-person program?

6 A. So are you asking me whether or not the  
7 university should have considered that when they  
8 switched everybody to online classes and then didn't  
9 compensate them?

10 Q. No, I'm asking whether you considered that in  
11 choosing the RIT online tuition rate as your benchmark.

12 A. No, it's just the price that was paid in the  
13 but-for world that I've created and it is the estimate  
14 that I have based on what are RIT charges for online  
15 training which they claim is as good as the training  
16 that is offered in person but there's a large price  
17 differential.

18 Q. So you decided that the RIT online tuition rate  
19 was an appropriate benchmark to use because of a  
20 statement that the RIT online training is just as good  
21 as in-person training?

22 A. Well --

23 MR. DOOLITTLE: Object to the form.

24 THE WITNESS: -- it was RIT's statement so  
25 the only thing I could rely on is what RIT says about

1 its programs. It's offering an education. It offers  
2 classes. It says specifically it's the same professors  
3 offering these classes so at this point the only thing I  
4 know is is that people wound up in the (audio  
5 distortion) their choice and the university had  
6 originally said they were going to be charging, you  
7 know, tuition for in-person classes.

8 Q. (BY MS. SHEN) You didn't consider whether the  
9 classes offered through the RIT online program are the  
10 same as the classes offered through RIT's  
11 on-campus-based programs, correct?

12 A. I don't know that and I also don't know whether  
13 they change from term to term. I just know that there  
14 was a blanket statement that this is the price that RIT  
15 charges for the courses that are offered online.

16 Q. You didn't consider, for example, whether RIT  
17 online offers any of the undergraduate programs that it  
18 offers in its campus-based programs, correct?

19 A. It's immaterial. What happened at the end was  
20 that everybody wound up taking online classes so whether  
21 or not they were previously offered, they were offered  
22 after the university closed.

23 Q. You didn't consider whether the classes in the  
24 RIT online program were conducted in the same manner as  
25 the classes RIT transitioned online in response to

1 COVID, correct? So like, for example, you didn't  
2 consider whether classes are the same -- same class  
3 length or whether they are synchronous or asynchronous,  
4 whether they involve class student participation. You  
5 didn't consider any of those factors, correct?

6 A. No.

7 Q. You didn't consider the student-teacher ratio  
8 in the RIT online classes as opposed to the COVID  
9 transition classes, correct?

10 A. I did not.

11 Q. And you didn't consider what support services  
12 might be available to RIT online students versus  
13 students who had their classes transitioned online in  
14 response to COVID, correct?

15 A. No.

16 Q. You also didn't consider the -- whether the  
17 course syllabi or the course workload was the same for  
18 students who enrolled in the RIT online program versus  
19 students who were transitioned on line as a result of  
20 COVID, correct?

21 A. Did not.

22 Q. And you did not consider whether the RIT online  
23 program is designed for students who are employed or,  
24 you know, are pursuing professional degrees and whether  
25 that is similarly applicable to the student body that

1 was transitioned to online classes as a result of COVID,  
2 correct?

3 A. There's nothing in the course catalog that says  
4 that there's a limitation of taking RIT online only for  
5 those people who are already fully employed. You're  
6 asking me about hypotheticals that have nothing to do  
7 with what actually is stated by RIT regarding the -- the  
8 program. So RIT online is available to everybody, not  
9 just, you know, some subset of people. So, you know,  
10 what you're asking me is a hypothetical that doesn't  
11 apply to the calculations that I've -- I've conducted.

12 Q. Did you review the list of degree programs  
13 offered through the RIT online program?

14 A. I did at the time that I looked at it several  
15 months ago.

16 Q. And in that review did you -- are you aware  
17 that the RIT online program only offered one degree  
18 program for undergraduate students?

19 A. Yes.

20 Q. Did you review the course list offered through  
21 the RIT online program?

22 A. I can't remember. I looked at the degree  
23 program but I'm not sure I looked at the specific  
24 courses.

25 Q. Would you be surprised to learn that the number

1 service -- or accessibilities?

2 A. Well, even if there is, they don't state that  
3 there is so how would anybody know that?

4 Q. Did you review RIT's financial -- audited  
5 financial statements?

6 A. No.

7 Q. All right. Going back to your report, I'm now  
8 looking at paragraph 27, here you state, "Likewise, the  
9 calculations here can be easily adjusted to account for  
10 any partial refunds that have been already been issued  
11 by RIT."

12 Is it fair to say that you did not consider  
13 in your model any refunds that may have already been  
14 issued by RIT?

15 A. Well, you left out the next sentence so let me  
16 read it into the record. "I expect information on  
17 refunds, if any, will be provided by Defendants." So,  
18 no, I didn't include it because I didn't have any  
19 information on which to base and include. I don't even  
20 know if they gave any refunds.

21 Q. Did you ask plaintiffs or their counsel to  
22 provide you that information?

23 A. I asked if they gave refunds and the answer I  
24 got was I don't know.

25 Q. If you were to adjust your model for any

1     refunds that were issued, how would you do that?

2             A.   Subtract the refunds off of the -- well, I  
3     haven't fully considered this so it's a hypothetical but  
4     we're keeping in mind that it's a hypothetical, if there  
5     were refunds that related to the COVID epidemic and the  
6     closure of the school, then I would subtract that off  
7     from the damages.

8             Q.   So am I understanding you correctly that that  
9     would sort of be the last -- I guess last step in -- in  
10    your analysis?

11            A.   Yes.

12            Q.   You also do not consider the impact of any  
13    terrorist act funding or other sort of COVID relief  
14    funding that was provided to students, correct?

15            A.   I apologize, Ms. Shen, but I missed the first  
16    half of your question so I didn't -- I also did not  
17    consider --

18            Q.   Sorry. Yeah, I'll repeat it. You also did not  
19    consider any terrorist attack funding or other COVID  
20    relief provided to students, correct?

21            A.   I did not.

22                   (Exhibit 9 was marked for identification.)

23            Q.   (BY MS. SHEN) Let's mark as Cowan Exhibit 9 a  
24    document titled RIT0001155. Dr. Cowan, let me know when  
25    you have that up.

1 don't think it needed that level of detailed analysis.

2 Q. So -- so nobody did such an independent  
3 investigation, correct?

4 A. No. It's a time.

5 Q. And did anybody on your team do an independent  
6 investigation to confirm whether 15 credit hours was an  
7 appropriate average for full-time students?

8 A. No.

9 Q. Going back up to the row that's got a title or  
10 a heading "Grant & Scholarship Aid, All Undergraduate  
11 Students (2019 - 2020)," it has a numerical qualifier of  
12 \$229,832,759. Do you see where I'm at?

13 A. No. I'm sorry, I'm at "Scholarships and  
14 Grants" which is in row 7.

15 Q. Oh, I'm actually looking further down. I'm  
16 looking at row 33 of the Excel.

17 A. Oh, you said higher up so, sorry, I went all  
18 the way up. Oh, yes, I now see it.

19 Q. Okay. And it looks like this information was  
20 pulled from IPEDS AY 2019 through 2020. Is that the  
21 data collected from the NCES website?

22 A. Yes.

23 Q. Let me direct your attention to -- well,  
24 actually, let me ask you first, the data that your  
25 team -- you and your team were reviewing from the NCES

1 financial aid award was issued to the NTID students?

2 A. No.

3 Q. Sticking with Exhibit 13, the next row in that  
4 Excel spreadsheet is for Pell grants only. And if I am  
5 reading your Excel -- your model correctly, up in row 7  
6 you back -- you subtract the amount of Pell grants  
7 issued to students from the -- from the grants and  
8 scholarships. Why is that?

9 A. I'm not aware that Pell grants are used to  
10 offset tuition.

11 Q. What is the basis for that understanding?

12 A. I'm just saying I'm not aware of it. I didn't  
13 say I had an understanding.

14 Q. Well, what is your understanding of what Pell  
15 grants are issued for?

16 A. I don't recall right off the top of my head but  
17 we excluded Pell grants I believe it's because they go  
18 to the student but I don't know that 100 percent.

19 Q. So if -- if I'm understanding you correctly,  
20 you excluded them because you -- because of beliefs that  
21 the Pell grants paid directly to the student, correct?

22 A. No. What I said was I think it may be that and  
23 I just don't know what the reason is.

24 Q. So if a Pell grant -- I'm sorry, I didn't mean  
25 to cut you off.

1 they signed up for the online programs. They -- they  
2 weren't subject to the -- the full tuition or the -- or  
3 the issue that's raised in the Complaint.

4 Q. Did you do anything to confirm that those  
5 students who took some but not all of their courses  
6 online paid the RIT online rate?

7 A. No, I didn't have a means of doing so. So  
8 here, once again, this is an example. It's not meant to  
9 be, you know, an exact calculation. What I did was I  
10 assumed that those people who are in the online programs  
11 were not included in the class. I don't know exactly  
12 what they paid so this is just a general assumption just  
13 like I took out people in the NTID program. So I took  
14 two groups out that I felt weren't subject to -- or  
15 wouldn't be included in the class and offered this as an  
16 example of full-time and part-time students but I  
17 understand you keep asking me about these exact  
18 calculations and I keep trying to explain this is an  
19 example. It's not meant to be an exact calculation.  
20 It's just an example of how we would proceed and I based  
21 it mostly on information from IPEDS and as we discussed  
22 before, even the information from IPEDS is incomplete  
23 because I don't know how much of grant and scholarships  
24 went in part to the NTID program.

25 Q. Under this sort of carveout of the 16 percent